

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6701 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AHMEDABAD MUNICIPAL TRANSPORT SERVICE

Versus

JAYENDRAKUMAR KANAIYALAL SUKLA

Appearance:

MR SR BRAHMBHATT for Petitioner

MR MEHUL S SHAH for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/02/98

ORAL JUDGEMENT

1. Ahmedabad Municipal Transport Service by this special civil application challenges the award of the Labour Court at Ahmedabad in Reference (LCA) No.1034/85 decided on 30th September, 1986.

2. The learned counsel for the petitioner, Shri S.R. Brahmbhatt, contended that the Labour Court has committed serious illegality in interfering with the quantum of

punishment given to the respondent-workman for serious misconduct. It has next been contended that the domestic inquiry conducted by the petitioner in the matter against the respondent-workman was not challenged, and as such, the findings recorded in the inquiry should have been accepted by the Labour Court and punishment given to the respondent-workman of dismissing him from services should not have been interfered. Lastly, it is contended that it is a matter where the conductor has misappropriated the money of the Corporation, and as such, the punishment of dismissal given to the respondent-workman could not have been said to be excessive or harsh or shockingly disproportionate to the nature of misconduct. Carrying this contention further, the learned counsel for the petitioner contended that the past service record of the respondent-workman is also full of adversities, and, in all, there are 129 defaults in his service record.

3. On the other hand, the learned counsel for the respondent contended that the Labour Court has jurisdiction to interfere with the punishment given to the delinquent workman and that power clearly flows from the provisions of section 11-A of the Industrial Disputes Act, 1947. Even if the misconduct is held to be proved and inquiry is held to be legal and valid still in case the Labour Court finds that the punishment given to the respondent-workman is shockingly disproportionate to the nature of misconduct, it can interfere with the same, and appropriate punishment could have been substituted, which precisely what the Labour Court has done. It has next been contended that this Court sitting under Article 227 of the Constitution may not interfere with the award where the Labour Court has passed a reasonable award.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

5. The petitioner has given the penalty of dismissal from services to the respondent-workman and under the impugned award, the Labour Court has substituted that punishment by withholding of five grade increments and further respondent-workman has been denied the backwages. So the penalty of dismissal has been substituted by the Labour Court by the penalty of withholding of five grade increments and denial of backwages. It is true that the Labour Court has found as a fact that the misconduct alleged against the respondent-workman is proved and domestic inquiry held against the respondent-workman is held to be legal and valid but still in the appropriate case where the Labour Court finds that the punishment given to the delinquent workman to be shockingly

disproportionate to the misconduct then it can certainly interfere in the matter and substitute its own punishment. It is not the case where the Labour Court has not considered the past default record of the respondent-workman. The Labour Court has noticed the fact that the past record of the concerned workman is not free from doubt but taking into consideration the fact that he is out of employment since 28th January, 1985 it was considered to be a sufficient punishment suffered by the concerned workman. The workman has already given an application before the Labour Court in which he prayed that he may be given a new lease of life and in future no such incident would be repeated by him. He has further assured the Labour Court that he will perform his duty in honest manner and as such a lenient view may be taken. In these facts, the Labour Court considered it to be a fit case where the concerned workman should be given last opportunity to improve his career. Though the reasons which have been given by the Labour Court to interfere with the punishment awarded to the concerned workman by the petitioner may not be germane or relevant but admittedly in pursuance of the said award, the respondent-workman has been reinstated and it is not the case of the petitioner that after reinstatement, the respondent workman has repeated any default again.

6. There is yet another aspect which has been brought to the notice of this Court that during the pendency of this special civil application, the respondent-workman has also retired from the services on attaining his age of superannuation. Though to certain extent, I find some merits in the contention raised by the learned counsel for the petitioner but in view of the fact that the respondent-workman has not misused the last opportunity given to him by the Labour Court to improve his career and further he retired from the services, I do not consider it to be a fit case where the interference with the award should be made. However, the decision given in this special civil application is given on the basis of its peculiar facts and it may not be taken to be precedent in next cases. Rule is discharged with no order as to costs.
